STATE OF GEORGIA
2000
POLICY GUIDE
for
LOW INCOME HOUSING TAX CREDITS
and
AFFORDABLE HOUSING RESOURCES

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THE GEORGIA DEPARTMENT OF COMMUNITY AFFAIRS

THE GEORGIA HOUSING & FINANCE AUTHORITY

2000 POLICY GUIDE

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POLICY GUIDE

The Department of Community Affairs (DCA) Office of Affordable Housing (OAH) Policy Guide incorporates the more frequently used policies pertaining to OAH funding, but this Policy Guide is not intended to be all-inclusive. Each policy is noted with the program(s) to which it applies; i.e. HOME Loan Program ("HOME") and/or the Low Income Housing Tax Credit Program ("Credit"). This document is attached to, and is a part of the Qualified Allocation Plan (Plan).

1. ANNUAL OPERATING EXPENSES (HOME/Credit)

Annual budgeted operating expenses, excluding reserve contributions, must be no less than $2,000 per unit for rural locations and no less than $2,500 per unit for urban locations. However, DCA reserves the right to determine the reasonableness of budgeted operating expenses using market studies, appraisals, industry information, etc.

2. BUILDER'S COSTS LIMITATION (HOME/Credit)

Builder's overhead, general requirements, and builder's profit are limited to percentages of the total construction contract (net of builder's overhead, general requirements, and builder's profit) as follows:

- Builder's overhead Two percent (2%)
- General requirements Six percent (6%)
- Builder's profit Six percent (6%)

3. CARRYOVER ALLOCATIONS (Credit)

No project can receive more than one Carryover Allocation of Credit. If the owner determines that more Credit is necessary to make the project financially feasible, the owner may apply to DCA for additional Credit only during the competitive process in the year the project is placed in service and the owner applies for the IRS Form(s) 8609.

4. COMPLIANCE MONITORING FEES FOR MULTIPLE PROGRAMS (Credit)

When DCA is required to monitor projects for compliance with tenant income and/or rent limitations of more than one program e.g., Credit and FDIC, the applicable monitoring fees for each program will be charged.

5. CONSTRUCTION CONTINGENCY (HOME/Credit)

The construction contingency amount shall equal 2% of the total construction cost for new construction projects. For rehabilitation projects, the construction contingency amount shall be at least 5%, but no greater than 7% of the total construction cost. DCA reserves the right to adjust development budgets in this regard, for underwriting purposes, in its sole and absolute discretion.

To the extent feasible, DCA funds should be allocated to cover disbursements from the construction contingency. Regardless of how the contingency is funded, DCA must approve all change orders. If applicable, an intercreditor agreement that includes other funding sources will be executed to ensure DCA's control or joint control over disbursements from the construction contingency.

Any unused balance in the construction contingency at the time of loan conversion from construction to permanent must be used to reduce the principal amount of the HOME loan or the senior lender loan as appropriate, with the monthly principal and interest payment amounts adjusted accordingly.

6. CONSTRUCTION HARD COST FINANCING (HOME)

OAH HOME loan funds can be used only to finance construction hard costs. Soft costs, acquisition costs and other project costs must be financed by other financing sources. (Not applicable to CHDO predevelopment loans).

7. CONSTRUCTION LOAN RECOURSE (HOME)

All construction loans will be full recourse against the borrower and/or the principals of the ownership entity until full and final completion of the project as determined by DCA.

8. CONSTRUCTION START DATE (HOME)

Projects receiving HOME funds shall not begin construction prior to the HOME loan closing. Exceptions may be granted by DCA at its sole and absolute discretion, but must be requested prior to construction commencement. Failure to comply with this policy may result in the withdrawal of the HOME Reservation of Funds.

9. CONTRACT BIDDING AND BID BONDS (HOME)

Project owners are not required to solicit bids for construction contracts to be financed with DCA construction loans, and bid bonds are not required when bids are solicited, unless otherwise required by law. However, prior to making a loan commitment DCA shall have approved both the general contractor and the contract documents; DCA will not close a construction loan unless the approved contract with the general contractor has been fully executed.

10. COOPERATIVES AND SCATTERED SITES (HOME/Credit)

DCA will not accept applications for leasing cooperatives, limited-equity cooperatives, projects proposing to convert to cooperative ownership following the compliance period, or scattered-site projects for single family buildings, multifamily buildings, or combinations thereof.

11. DEBT COVERAGE RATIO (HOME/Credit)

The debt service coverage ratio for all secured tangible debt (**not including the deferred developer fee**), after funding expenses and other required reserves, must be between 1.10 and 1.30 for the first full year of operation. The debt coverage ratio shall not drop below 1.10 during the 15-year compliance period, HOME Loan term, or the period of affordability, whichever is longer. The Credit and/or HOME loan amount may be reduced if DCA's underwriting indicates a debt coverage ratio greater than 1.30 in the first full year of operation.

12. DEFERRED DEVELOPER FEE (HOME/Credit)

When determining the amount of Credit necessary to make a project financially feasible, DCA will not consider the deferred developer's fee. When calculating the project's debt coverage ratio, the applicant should not include the deferred developer's fee in the calculation. Any owner's equity shown in the Application, excluding the general partner's contribution required by the Limited Partnership Agreement will be used in the calculation of Credit. This policy will apply at reservation, carryover, and final allocation. A developer should either take the deferred fee in the form of a note, or incorporate the deferred developer fee into the limited partnership agreement along with a detailed repayment schedule and specific terms. DCA will accept either approach as long as the terms of the deferred fee meet the requirements as set forth in the Plan.

13. DENIAL OF PARTICIPATION (HOME/Credit)

Proposed project participants (owner/general partner, developer, management company, syndicator) that exhibit a continual pattern of noncompliance or demonstrate an inability or unwillingness to resolve noncompliance matters in a timely manner as further described in the Plan; are in default on an obligation under a DCA-administered program; are listed on any federal, state or local government's Debarred List or HUD's Limited Denial of Participation List, or exhibit an inability to start and complete outstanding projects in a timely manner will be ineligible to participate in the 2000 competitive round.

14. DETACHED SINGLE FAMILY RENTAL HOUSING (HOME/Credit)

Under the 2000 Plan, detached single family housing proposals will be eligible for funding if they satisfy the following requirements:

- Per unit costs must comply with the cost limitations set forth in the Plan.
- The Application must include in its development budget the costs associated with the continuous upkeep of each rental house, including grounds maintenance, at the project owners' expense. These costs must be supported by a detailed maintenance plan.
- The Application must have a detailed replacement reserve analysis and plan.
- The proposed project must be located on a single piece of property (scattered sites are not eligible).

- The house designs must reflect architectural diversity through the use of different elevations and styles.

- Landscaping must be appropriate for detached, single family housing.

15. DEVELOPER'S FEE LIMITATIONS (HOME/Credit)

The developer's fee is defined as the sum of the developer's overhead, developer's profit, consultant's fee, and reserves funded from the development budget held for less than the period of affordability. Also, if a consultant is acting in the capacity of developer or construction manager, or providing technical assistance to the developer or construction manager, the consultant's fee is considered part of the developer's fee.

DCA restricts the developer's fee to 15% of the total development cost less the developer fee and the cost of land. When an identity of interest exists between the owner and the general contractor, the developer's fee is restricted to 15% of the total development cost less the cost of the land, the developer's fee, and the builder's profit.

16. DEVELOPER'S OVERHEAD AND CONSULTANT FEE DRAWS (HOME)

The amount of the developer's overhead and consultant's fee (if applicable) that can be drawn during construction must not exceed the lesser of (1) 20% of the maximum allowable developer fees, or (2) 50% of the total developer fees requested. None of the developer's profit will be disbursed until all DCA conversion conditions have been met and the DCA construction loan has been converted to a permanent loan. These disbursement conditions will be reflected in the loan documents and in an agreement with any other funding source(s) that will be funding these line items.

17. ENVIRONMENTAL IMPACT (HOME/Credit)

On-site and off-site specific environmental concerns identified in an environmental study are to be considered in the context of the criticality of the housing to be provided. The public benefits of the housing are to be weighed against the costs to mitigate the hazard, the potential health risks, and other financial and public policy implications. The project will not be funded until all environmental matters are resolved in a manner satisfactory to DCA, in its sole and absolute discretion.

18. FINAL ALLOCATION DEADLINE (Credit)

Unless otherwise specifically noted in a particular project's carryover allocation document, the work scope proposed in the initial application of a project must be no less than 95% complete by December 31 of the year in which it is placed in service (two years after the carryover allocation is made). If this requirement is not met, DCA reserves the right to recapture any and all Credit allocated to that project.

If the owner of a Credit project wishes to have a land use restrictive covenant recorded on the property by the close of the calendar year in which it has been placed in service, and thus be eligible to claim the Credit for that tax year, the owner must either apply for final allocation or issue a written request for the land use restrictive covenant no later than November 15 of the year the property is placed in service.

19. FINAL ALLOCATION PLACED-IN-SERVICE REQUIREMENT (Credit)

All buildings in a project must be placed in service before the owner may apply for a final allocation of Credit. Therefore, IRS Form(s) 8609 for a project will be issued only once for the entire project as proposed in the application. Form(s) 8609 will not be issued as buildings are placed in service.

20. IDENTITY OF INTEREST (HOME)

An identity of interest exists when a person, principal, or entity with an interest in the ownership of the property contracts with the owner to provide services.

Owner-Contractor
If there is an identity of interest between project Owner and Contractor, a third party front-end analysis of the construction costs must be submitted to DCA at the time the DCA reservation is formally accepted. Additionally, industry standards for such owner-provided construction services shall be used by DCA to determine reasonableness for the services.

Other
If there is an identity of interest between the project Owner and any other provider of service, material, or supplies, three (3) bids must be submitted to DCA. Such Owner-supplied services, materials, or supplies must not exceed the amount ordinarily paid for the service, material, or supply.

21. INTERCREDITOR AGREEMENTS (HOME)

When DCA is not the only construction lender on a project, an Intercreditor Agreement shall be executed with the other lenders to ensure DCA's required involvement in all significant aspects of the administration of the construction loans.

At a minimum, the Intercreditor Agreement should contain the following essential elements:

- An approved development cost budget indicating the source(s) of funding for each line item;
- A process and timetable for reviewing and approving change orders to the construction contract;
- A process and timetable for reviewing and approving draw requests, including site inspection and documentation standards;
- A process and timetable for amending the approved development cost budget; and

Limitations on disbursements for developer's fee (owner's profit and risk) and consultant fees.The Intercreditor Agreement shall also address other matters, such as subordination of one lender's interest to another lender's interest.

22. LAND USE RESTRICTIONS (HOME/Credit)

When there is more than one document imposing land use restrictions on a project, e.g., HOME and Tax Credit properties, there may be restrictions in one document that are more restrictive than similar restrictions in the other document(s). In such instances, the most restrictive requirements will apply to the project.

23. LATE FEES (HOME/Credit)

Late fees imposed by DCA will not be considered as a project cost for underwriting purposes.

24. LEGAL COSTS BREAKDOWN (HOME)

The Developer is required to include in the Application an itemized estimate of legal fees and related expenses included in the development budget. This itemization must be prepared by the project's attorney and should be on the attorney's letterhead. A complete breakout is required and should include categories, title insurance fees, recording fees, partnership organization fees, tax credit opinion fees for Borrower's counsel, and any construction and/or permanent lenders' attorney fees. DCA will not take a subordinate lender position when development budgets appear to have excessive fees relative to similar projects, relative to the overall complexity of the deal, or relative to the overall development budget.

25. LOAN MODIFICATIONS (HOME)

Before DCA will consider a loan modification request, the Borrower must be current on all payments and in compliance with the terms and conditions of all HOME and Credit properties funded/awarded by DCA. Once DCA receives all of the information needed to process the request, DCA will respond in writing within 60 days.

26. LOAN UNDERWRITING CONSIDERATIONS (HOME)

When DCA underwrites a HOME loan it will consider certain factors in the process of determining the debt capacity, the loan amount, and the terms to satisfy the debt. The following considerations, while not all-inclusive, provide general guidance.

- Rents must be affordable at initial lease-up and must remain affordable over the term of the loan. DCA will not underwrite rents below 30% of 50% of AMI unless a DCA-commissioned market study indicates that there is a substantial need and/or that the market will require rents to be lower for the property to achieve initial and long-term lease-up. Applicants proposing rents below 30% or 50% of AMI must set these lower rents at percentages of AMI that are divisible by five (e.g., 35%, 40%, 45%). Also, tenant income restrictions must be set a percentages divisible 5% and the income restrictions must not exceed the lower rent restrictions by more than 5% (i.e., rents underwritten at 40% of AMI must be income restricted at no greater than 45% of AMI).
- Project cash flow must be sufficient to ensure financial viability over the term of the loan and provide for adequate reserves that will be maintained for the life of the loan.

- Use of private debt, the use of other public financing sources, and shorter HOME loan terms will be favorably considered.
- The proposed return on investment for the owner/developer must be fair and reasonable with no windfall profits anticipated.
- The most recent Area Median Incomes (AMI), Fair Market Rents (FMR), and Utility Allowances (UA) (collectively referred to as the "rent standards") will be used to determine project rent and rent restrictions.

27. MANAGEMENT UNIT DESIGNATION (HOME/Credit)

For applicants electing to house management personnel in a project unit, the management unit can be either designated as part of the unit count or part of common space. If the management unit is designated as part of the unit count, it must be occupied by an income eligible household which may be the on-site manager, and rent can be charged or collected by the owner for this unit. If the management unit is designated as part of common space, it need not be occupied by an income-eligible household, but must be occupied by the on-site manager, and no rent can be charged or collected by the owner for this unit.

28. MARKET FEASIBILITY AND APPRAISAL (HOME/Credit)

DCA will commission a market study and appraisal (appraisal applies to HOME and/or HTF only) by a qualified firm selected through a competitive process. The market study and appraisal commissioned by DCA will be the official documents considered in the competitive round. DCA will charge the applicant a fee, due at the time of application, to offset associated costs of the market study. DCA recommends that prior to submitting an Application, each applicant independently obtain a market analysis sufficient to satisfy their own concerns about market viability. Applicants may submit any market information with the application that they believe may be helpful in determining the market feasibility of their proposal. This information will be given to DCA's market analysts for use in their determinations.

DCA will charge the applicant a fee to cover the cost of the appraisal report, due on the date specified in the HOME Reservation Letter. The commissioned appraisal reports shall include the tax credit value, "as is" value, "as built" (encumbered), and "as built" (unencumbered) values of the proposed subject property. In cases of HOME loans, the appraiser will be asked to provide an estimate of the market value (unencumbered) of the property at maturity.
The total hard cost of any rehabilitation project may not exceed 90% of the as completed unrestricted appraised value of the property. Any rehabilitation project found not to meet this requirement, once the commissioned appraisal is done, will have their funding award revoked.

When preparing project development budgets, applicants should use $4,000 for the market study and a reasonable estimate for the appraisal cost based on the applicant’s experience with projects of a similar size and scope. The DCA market studies and appraisals will be assignable to other lenders. Copies of the market studies will not be accessible by the applicant or others until the close of the competitive round, in accordance with Title 50-26-8(a)32 of the Official Code of Georgia Annotated. Applicants may submit a written request, after the close of the competitive round, requesting a copy of their market study and appraisal. All market studies and appraisals will remain the property of DCA.

DCA 's determination is final with respect to the market study and appraisal information.

29. NO ADVERSE IMPACT ON EXISTING ASSISTED HOUSING (HOME/ Credit)

No awards will be made to a proposed project that is judged by DCA, in its sole and absolute discretion, to have a potentially adverse impact on existing assisted rental housing property. "Assisted rental housing properties" include Low Income Housing Tax Credit properties, USDA (FmHA)/Rural Development financed properties, HUD 202 or 811 financed properties as appropriate, DCA or locally financed HOME properties, Georgia Housing Trust Fund for the Homeless financed properties, and HUD 221(d)(3) and 221(d)(4) properties and other market rate FHA insured programs. DCA does not regard public housing as competitive with programs administered through the Plan; therefore, this policy does not apply to public housing properties. The DCA-commissioned market study will assess the possibility of adverse impact as one criterion used in judging the market viability of the proposed project.

30. OFF-SITE COSTS (Affordable Supportive Housing Program)

Off-site costs cannot be funded using ASHP funds. Exemptions can be made at DCA's sole and absolute discretion.

31. OPEN RECORDS REQUESTS (HOME/Credit)

All applications are subject to disclosure under the rules governing the Georgia Open Records Act (GORA). Applicants must agree in the Application to hold harmless the agency for any and all losses associated with disclosures in accordance with GORA.

Requests for copies of DCA documentation should be made in writing to ensure accuracy and proper processing. DCA will provide a timely acknowledgement of the request, and will estimate the costs, if any, based on the services requested. A party may also elect to review the documents at the DCA offices. Under these circumstances, the party should forward to DCA a request to review specific documents and coordinate with DCA a time that is mutually agreeable. GORA allows the agency to charge a fee to cover the cost of a document custodian to monitor the review process, and for the cost of copying requested documents.

32. OPERATING DEFICIT RESERVES (HOME)

All developments financed in whole or in part with OAH loans must budget for and fund an Operating Deficit Reserve in an amount of no less than six times the secured monthly debt service to lenders plus no less than six months projected operating expenses. The funding of the Operating Deficit Reserve is a requirement that must be completed prior to the permanent loan conversion. If drawn upon, no further distribution to owners will be authorized until such time as the reserve is restored to full funding.

The Operating Deficit Reserve must be held by DCA or the Senior Lender, and must remain in place for the term of the DCA loan, or period of affordability, whichever is longer. If DCA is a subordinate lender, but funds the loan in an amount greater than the senior lender, DCA must hold the reserves. All withdrawals from the Operating Deficit Reserve must be requested in writing and approved in advance by DCA. Interest earned on the Operating Deficit Reserve account shall be added to the account as an additional contribution and will not be credited against the required monthly cash contributions.

33. OUT-OF-STATE NONPROFIT (CHDOs)

A nonprofit incorporated in a state other than Georgia wishing to become a Georgia Community Housing Development Organization (CHDO) must meet the following requirements in addition to the Georgia CHDO Qualification requirements.
The organization must have:

1. An office in Georgia.
2. Paid staff in Georgia.
3. A board comprised of no less than 50% Georgia residents

34. OVER INCOME TENANT RESTRICTION (Credit)

IRC Section 42 provides that a tenant's income may increase during tenancy to exceed 140% of the allowable household income. DCA requires that the lease for tenants who exceed this limit for two (2) successive years may not be renewed for the third year. The penalty for failure to adhere to this DCA policy may be forfeiture of the right to participate in all DCA programs in one or more future years depending upon the severity and nature of the particular circumstances.

35. OWNER/CONTRACTOR AGREEMENTS (HOME)

If the Owner is not also the General Contractor, all developments financed in whole or in part with a DCA construction loan must use an AIA Standard Form Agreement Between Owner and Contractor, with Standard Form Terms and Conditions. The contract can be either stipulated sum or cost plus a fee with a maximum.

DCA will not pay draw requests that include the cost of stored materials. The construction contract must state that at least 10% of the cost of the completed work is to be withheld as retainage until DCA has determined that the work is substantially complete.

36. PARTNERSHIP AGREEMENT (HOME)

The partnership agreement and any amendments must be fully executed before or simultaneously with the DCA loan closing. The Partnership Agreement and any amendments must reflect the terms of the loan transaction on all material points.

37. PAYMENT AND PERFORMANCE BONDS (HOME)

A 100% Payment and Performance Bond will be required for all developments funded by DCA. A waiver may be granted only when there is an identity of interest between the Owner/Developer and the Contractor, regardless of the contract amount, since such a relationship is usually not bondable. A waiver will not be considered unless:

1. The Owner agrees to provide a Construction Completion Guaranty, secured by a letter of credit with a value of at least 50% of the total construction cost, including profit and overhead; or
2. The Owner agrees to secure a construction loan with private financing. DCA will disburse funds during the construction period, in an amount not to exceed $2,500 per construction draw.

The final payment of funds shall be made at the time of substantial completion of construction, to be evidenced by submission of all items on the DCA Requirements for Final Draw, including but not limited to: Final Payment Request in AIA form, copies of all Certificates of Occupancy for all buildings, Final Lien Waivers, Construction Consultants' final inspection, approval for release of funds, et cetera.

38. RELOCATION/DISPLACEMENT OF TENANTS (HOME/Credit)

For all HOME and Credit projects, tenant household data forms must be submitted with the Application for every occupied unit in each building to be rehabilitated. The applicant is responsible for the accuracy of the information on the data forms.

Project Applications for HOME loans that require relocation of existing tenants due to rehabilitation work will be accepted only with a relocation plan (including a sufficient budget) that in the opinion of DCA, meets the requirements of the Uniform Relocation Act and any other applicable laws. Funding sources other than HOME must be used to finance the relocation costs. For Credit projects, DCA policy will not allow permanent displacement of tenants, if avoidable. If the applicant anticipates displacing tenants, the applicant must include in the application a detailed displacement plan, which sets forth the specifics of the displacement, including a projected budget, and an explanation of efforts planned by the applicant to mitigate the impact of the displacement. Any displacement of tenants will be subject to DCA’s prior written approval.

39. RENT DISTRIBUTION ACROSS UNIT SIZES (HOME)

Projects with a multi-tiered rent structure, (e.g., HOME-funded projects with high HOME rents and low HOME rents), must distribute the rents equally across unit sizes. These units need not be fixed (e.g., specific 2-bedroom units always renting at low HOME rents), but may float in the same way high HOME rent and low HOME rent units may float within a project. For example, a HOME-funded project with ten 1-bedroom units and ten 2-bedroom units must have at least two 1-bedroom units and two 2-bedroom units at low HOME rents. These units need not be fixed, e.g., unit numbers 2, 6, 10 and 18, but may float as long the minimum requirement of two 1-bedroom units at low HOME rents is met. The project could not have four 1-bedroom units at low HOME rents, as it would be a violation of this policy.

40. REPLACEMENT PLAN (HOME)

A reasonable reserve for capital and replacement expenditures should always be included in an operating budget. As part of the Application, Applicant shall include a Replacement Plan and Schedule. The calculations and assumptions used in the Replacement Plan should take into account the fact that over the life of the project, capital items such as building roofs, parking lots, HVAC systems, major appliances, etc., will need to be replaced. DCA will, at its discretion, adjust the reserve fund to reflect reasonable and customary capital and replacement expenditures. At a minimum, the Replacement Plan must reflect reserve contributions and, depending on the projects characteristics, may require contribution amounts greater than the minimum Replacement Reserves requirements.

41. REPLACEMENT RESERVES (HOME/Credit)

A Replacement Reserve is required for all developments financed with OAH resources. Contributions must be made to the Reserve Account, starting at or before the conversion date of the construction loan to permanent loan and must be funded for the term of the loan. The following minimum contributions must be used:

- Rehabilitation $25.00 per unit per month ($300 per unit per year)
- New construction $16.70 per unit per month ($200 per unit per year)

Replacement Reserve funds may be used only for capital improvements and system replacements, and must not be used for general maintenance expenses. All withdrawals from the Replacement Reserve account must be approved by DCA in advance. The Replacement Reserve account must be maintained in a FDIC-insured financial institution or by DCA. Interest earned on the Replacement Reserve account shall be added to the account as an additional contribution and will not be credited against the required monthly cash contributions. Capital improvements means improvements to the real estate, the cost of which would exceed $10,000, such as re-roofing, structural repairs, or major projects to replace or upgrade existing furnishings, but not including replacement of individual appliances or minor repairs. Replacement reserves will escalate at a rate of 3% per year. If the Replacement Plan indicates that an amount greater than the minimum reserve outlined above is necessary, then this greater amount will be required and must be escalated at a rate of 3% per year.

42. REVENUE, VACANCY, AND EXPENSE TRENDS (HOME/Credit)

Revenue should be trended at 2% per year, operating expenses at 3%, and vacancy and collection loss at no less than 10%, with the exception of those proposals that include rental assistance. Proposals that include rental assistance should use 7% as its vacancy factor.

43. SECTION 8 RENTAL ASSISTANCE CERTIFICATE AND VOUCHERS (HOME/Credit)

No owner may deny a unit to applicants possessing a Section 8 Rental Assistance Certificate or Voucher unless that applicant fails to meet the minimum requirements for all lease holders. Federal Statutes prohibit discrimination against Section 8 Certificate and Voucher holders. DCA will closely monitor whether the tenant application process is structured to avoid such discrimination or whether any actions are taken to discourage Section 8 Rental Assistance Certificate or Voucher holders from applying. Likewise, all lease provisions must be compatible and not in conflict with Section 8 leases.

44. SOFT COST CONTINGENCY (HOME/Credit)

"Soft cost" or "total project" contingency, over and above the allowed construction contingency, will not be permitted as a budgeted line item.

45. SPECIAL ALLOCATION CONSIDERATIONS (Credit)

In its sole and absolute discretion, and where warranted by extenuating circumstances, DCA reserves the right to allocate Credit, up to the first day of the allocation round, based on the prior year's allocation plan with all applicable terms and conditions to projects that received an allocation in the prior year. DCA also may award Credit to projects by other than the highest score within the preferences stated in this Plan. If necessary, in each round, DCA will award 75% of the Credit authority available according to the points received and the preferences set forth in this plan until the amount available is depleted. The remaining 25% of Credit authority will be awarded within the preferences to achieve balance as required by factors, such as geographic area, type of activity (new construction/rehabilitation), size of project, and type of project (Multifamily, Special Needs, Elderly).

46. SUBORDINATION (HOME)

The decision whether to subordinate DCA's regulatory agreement and/or lien position to a private lender's security deed will be made only after DCA considers the individual circumstances of each loan. Factors that will be considered include but are not limited to the senior loan amount, DCA's loan amount, debt coverage ratio, private lender's interest rates, loan maturity, type of loan, etc. In no instance will DCA subordinate to a public entity's loan.

47. STABILIZATION/VACANCY FACTOR (HOME/Credit)

Projects shall be underwritten assuming a 10% vacancy factor, with the exception of projects having rental assistance which should use a 7% vacancy factor. Projects will be considered stabilized when occupancy reaches 90% for four consecutive months.

48. TRI-PARTY AGREEMENT (HOME)

A Tri-Party Agreement (Agreement) will be required for all DCA loan transactions involving another permanent lender that is not financing construction costs. The Agreement must clearly state, at a minimum, that the permanent lender has reviewed and approved the DCA loan documents, plans and specifications, development budget, tenant lease, environmental assessment, construction contract, title exceptions legal description, management agreement, partnership agreement, borrower's Certificate of Limited Partnership, survey, appraisal, form of Subordination Agreement, and items necessary to satisfy the Permanent Commitment regarding completion of construction of the improvements of the collateral property.

49. UNDERWRITING ASSUMPTIONS FOR LAND PURCHASE (HOME)

For purposes of underwriting for HOME projects, the cost assumed for acquisition of land and existing buildings will be limited to the lesser of the sales price and the appraised "as-is" value. Only the appraised value of that amount of land that would yield a project density of five units per acre will be included in the approved development budget. The appraisal will be commissioned by DCA during the loan underwriting phase.

50. UNIT DISTRIBUTION WITH MULTIPLE OAH FUNDING (HOME/Credit)

Projects applying for both HOME and Credit funding must set aside the same units to be funded by HOME and Credit resources. Credit funding cannot be used for one set of units, and HOME funds for a different set of units, or a lessor number of units, in the same project.

51. UTILITY ALLOWANCE (HOME/Credit)

Applicants should use the utility allowances provided by the agency administering the Section 8 Rental Assistance Program in the jurisdiction in which the project is located. For example, if a local Housing Authority administers Section 8 in the area, they would provide those utility allowances, but if DCA administers Section 8 in another area, the DCA utility allowance would be used. If a building receives USDA-Rural Development (USDA-RD) assistance, or any tenant in the building receives USDA-RD assistance, the low-income units must use the applicable USDA-RD utility allowance. If HUD reviews rents and utility allowances on a building, the low-income units must use the applicable HUD utility allowance. In all other cases, the owner is required to follow the applicable Public Housing Authority utility allowance or DCA utility allowance.

52. WORKING CAPITAL/RENT-UP RESERVES (HOME)

Working Capital/Rent-Up Reserve is required for projects receiving a DCA loan only if a lease-up cash flow analysis results in a cash flow deficit. For those developments, the required rent-up reserve would equal the amount of the projected lease-up deficit. A required rent-up reserve will only be used to cover operating cash flow deficits during the period prior to converting a construction loan to a permanent loan.

Allocations to the Working Capital/Rent-Up Reserve above the amount required by DCA may be used as a general "soft cost" contingency in order to supplement insufficient allocations to other line items. Documentation of the budget insufficiency must be submitted with any disbursement request. DCA approval is required for all disbursements from the Working Capital/Rent-Up Reserve. Loan documents and intercreditor agreements should reflect this requirement and DCA's approval authority.

Any unused balance in the Working Capital/Rent-Up Reserve at the time of loan conversion to permanent must be used to reduce the principal amount of the Senior Lender Loan, with the monthly principal and interest payment amounts adjusted accordingly, unless the project owner has been required to leave all or part of the developer's fee (owner's profit and risk) in the deal as equity or as an unsecured loan. If the project owner has been required to leave all or part of the developer's fee in the deal, then at project completion the unused balance in the Working Capital/Rent-Up Reserve may be allocated to the developer's fee line item, and paid out to the project owner, up to the amount of the reinvested fee. At no time can the developer's fee exceed the maximum developer's fee described above in Policy 15.